

§ 230.143

Stat. 905; 15 U.S.C. 77b) shall not include the interest of a person (1) who is not in privity of contract with the issuer nor directly or indirectly controlling, controlled by, or under common control with, the issuer, and (2) who has no association with any principal underwriter of the securities being distributed, and (3) whose function in the distribution is confined to an undertaking to purchase all or some specified proportion of the securities remaining unsold after the lapse of some specified period of time, and (4) who purchases such securities for investment and not with a view to distribution.

(b) As used in this section:

(1) The term *issuer* shall have the meaning defined in section 2(4) (48 Stat. 74, 48 Stat. 905; 15 U.S.C. 77b) and in the last sentence of section 2(11).

(2) The term *association* shall include a relationship between two persons under which one:

(i) Is directly or indirectly controlling, controlled by, or under common control with, the other, or

(ii) Has, in common with the other, one or more partners, officers, directors, trustees, branch managers, or other persons occupying a similar status or performing similar functions, or

(iii) Has a participation, direct or indirect, in the profits of the other, or has a financial stake, by debtor-creditor relationship, stock ownership, contract or otherwise, in the income or business of the other.

(3) The term *principal underwriter* shall have the meaning defined in § 230.405.

[3 FR 3015, Dec. 16, 1938]

CROSS REFERENCE: For interpretative release applicable to § 230.142, see No. 1862 in tabulation, part 231, of this chapter.

§ 230.143 Definition of “has purchased”, “sells for”, “participates”, and “participation”, as used in section 2(11), in relation to certain transactions of foreign governments for war purposes.

The terms *has purchased*, *sells for*, *participates*, and *participation*, in section 2(11) (48 Stat. 74, 48 Stat. 905; 15 U.S.C. 77b), shall not be deemed to apply to any action of a foreign government in acquiring, for war purposes and by or

17 CFR Ch. II (4–1–11 Edition)

in anticipation of the exercise of war powers, from any person subject to its jurisdiction securities of a person organized under the laws of the United States or any State or Territory, or in disposing of such securities with a view to their distribution by underwriters in the United States, notwithstanding the fact that the price to be paid to such foreign government upon the disposition of such securities by it may be measured by or may be in direct or indirect relation to such price as may be realized by the underwriters.

[6 FR 2052, Apr. 23, 1941]

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

PRELIMINARY NOTE: Certain basic principles are essential to an understanding of the registration requirements in the Securities Act of 1933 (the Act or the Securities Act) and the purposes underlying Rule 144:

1. If any person sells a non-exempt security to any other person, the sale must be registered unless an exemption can be found for the transaction.

2. Section 4(1) of the Securities Act provides one such exemption for a transaction “by a person other than an issuer, underwriter, or dealer.” Therefore, an understanding of the term “underwriter” is important in determining whether or not the Section 4(1) exemption from registration is available for the sale of the securities.

The term “underwriter” is broadly defined in Section 2(a)(11) of the Securities Act to mean any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates, or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking. The interpretation of this definition traditionally has focused on the words “with a view to” in the phrase “purchased from an issuer with a view to * * * distribution.” An investment banking firm which arranges with an issuer for the public sale of its securities is clearly an “underwriter” under that section. However, individual investors who are not professionals in the securities business also may be “underwriters” if they act as links in a chain of transactions through which securities move from an issuer to the public.

Since it is difficult to ascertain the mental state of the purchaser at the time of an acquisition of securities, prior to and since the adoption of Rule 144, subsequent acts and